

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

DAVID D. EVERIST,  
Plaintiff,

No. 1:12-cv-753-CL

v.

U.S.D.A., et al.,  
Defendants.

**ORDER**

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**PANNER, District Judge:**

Magistrate Judge Mark D. Clarke filed a Report and Recommendation, and the matter is now before this court. See 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b). When either party objects to any portion of a Magistrate Judge's Report and Recommendation, the district court makes a de novo determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1)(C); McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F. 2d 1309, 1313 (9th Cir. 1981). Here, plaintiff objects to the Report and Recommendation, so I have reviewed this

matter de novo.

### **BACKGROUND**

Plaintiff's complaint states:

Cross COMPLAINT FOR SON DE TORT  
FOR PROSESSARY ACTION Twin cedars placer. Under USC 30 § 53 on  
my exclusive possession use and enjoyment of my private Real  
estate personal private locatable mineral estate Domitian estate.  
With My Right to occupy, Right to exploits with in bounds of my  
possession by possessor title, location notice.  
Motion for injunction on the case United States VS David D.  
Everist to impose injunction by court on the UNITED STATES  
GOVERNMENT USDA USFS US ATTORNEY AND AGENTS AGENCY AND PARTIES.

Two months before plaintiff filed the complaint, the United  
States filed a criminal information against plaintiff. United  
States v. Everist, 1:12-po-1. The information charges four petty  
offenses, alleging plaintiff (1) unlawfully and knowingly occupies  
or uses a residence on National Forest System lands without  
authorization; (2) unlawfully and knowingly uses or occupies  
National Forest System lands without an approved operating plan;  
(3) unlawfully and knowingly cut or otherwise damaged timber  
without authorization; and (4) unlawfully and knowingly left  
litter or other refuse. A court trial on the criminal information  
against plaintiff is set before Magistrate Judge Clarke on July  
10, 2012.

### **FAILURE TO STATE A CLAIM FOR RELIEF**

Plaintiff seeks to enjoin the United States from prosecuting  
him. Plaintiff has failed to show the extraordinary circumstances  
necessary to justify enjoining an ongoing federal criminal  
prosecution.

"Courts repeatedly have recognized the very heavy presumption

against enjoining pending or threatened criminal prosecutions.” Downstate Stone Co. v. United States, 651 F.2d 1234, 1238 (7th Cir. 1981) (vacating district court’s injunction against criminal enforcement of federal mining law during pendency of quiet title action). To justify an injunction against a pending criminal prosecution, the plaintiff must establish “exceptional circumstances and a clear showing that an injunction is necessary in order to afford adequate protection of constitutional rights.” Id. (citation and quotation marks omitted).

Here, as in Downstate Stone, the proposed injunction would prohibit the government from enforcing “federal criminal statutes designed to police compliance with valid and applicable Forest Service rules and regulations.” Id. The “cost, anxiety, and inconvenience” of defending a single criminal proceeding is not “irreparable harm” for purposes of injunctive relief. Younger v. Harris, 401 U.S. 37, 46 (1971). Plaintiff has an adequate remedy at law because he can assert the same arguments raised in his complaint as defenses in the pending criminal proceedings, where plaintiff has the benefit of experienced and very able defense counsel.

Plaintiff has failed to state a claim for relief. Because no amendment to the complaint could cure its deficiencies, I dismiss the complaint with prejudice.

#### **Application to Proceed In Forma Pauperis**

After Magistrate Judge Clarke issued the Report and Recommendation, plaintiff filed a proper application to proceed in

forma pauperis. I grant plaintiff's application.

**CONCLUSION**

Magistrate Judge Clarke's Report and Recommendation (#7) is adopted in part. Plaintiff's application to proceed in forma pauperis (#12) is granted. Plaintiff's motions for summary judgment (#5, #6) are denied. The complaint (#1) is dismissed with prejudice.

IT IS SO ORDERED.

DATED this 21 day of June, 2012.

A handwritten signature in black ink, appearing to read "Owen M. Panner", is written over a horizontal line.

OWEN M. PANNER  
U.S. DISTRICT JUDGE